MARKETING, LICENSE, DISTRIBUTION & PROMOTION AGREEMENT

This Marketing, License, Distribution & Promotion Agreement (the "Marketing Agreement") is entered into and effective as of December 7, 1996 (the "Effective Date") by and between MICROSOFT CORPORATION, a Washington corporation located at One Microsoft Way, Redmond, WA 98052 ("Microsoft") and POINTCAST, INC., a California corporation located at 10101 N. De Anza Blvd., Cupertino, CA 95014 ("PointCast").

RECITALS

Microsoft is the owner and/or authorized licensor of the Windows 95 operating system, as well as of certain Internet-related technology, including "browsing" software known as "Internet Explorer" for the Windows 95, Windows NT, Windows 3.xx, Apple Macintosh and Unix operating systems.

Forthcoming versions of Internet Explorer are expected to have a feature known as "Active Desktop," which will enable users to choose pre-selected, and/or create their own, categories of "streaming" content which is automatically and periodically downloaded or "pushed" to the user via the World Wide Web ("WWW").

PointCast is the developer and owner of a media aggregation, delivery and service business whereby it pushes licensed content and advertisements to users of PointCast technology. PointCast is currently subject to certain agreements with third parties concerning promotion and distribution of non-Microsoft Internet "browsing" software, which all parties intend to honor.

Microsoft and PointCast wish to enter into a strategic marketing and distribution agreement whereby the parties will promote and assist each other's efforts in developing the "push" content business on Microsoft platform technology. In addition, PointCast is willing to market, promote and distribute Internet Explorer and related Microsoft Internet technology as its primary next generation browser platform for its business, and Microsoft is willing to include PointCast as a premier content aggregator on the Active Desktop and provide PointCast broad distribution.

The parties hereby agree as follows:

AGREEMENT

1. DEFINITIONS

1.1 "Active Desktop" means a feature of Microsoft's Internet Explorer (planned for inclusion in v4.0 and later) which provides, among other things, facilities to support "push" or "broadcast" of Channel Content, offline browsing of Content, and Content Rotation.

1.2 "Applicable Patent(s) Claims" means: (i) from Microsoft, Patent(s) claims which are infringed, directly or indirectly, either by inducement or contributory infringement, by Pointcast technologies, products or services when made, sold, offered for sale, imported, and/or used for their intended purpose; and (ii) from Pointcast, Patent(s) claims which are infringed, directly or indirectly, either by inducement or contributory infringement, by Microsoft technologies, products or services when made, sold, offered for sale, imported, and/or used for their intended purpose.

1.3 "Channel" means an aggregation of one or more categories of Content and/or Sub-Channels and/or associated advertising that is displayed or available to be selected by an End User or Customer for display within a Client.

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1.4 "Client" means software that delivers Channels through Content Rotation to End Users in one or more display elements, including: (i) an interactive application (such as a "Web Browser") that displays information within an application or similar window or directly upon a operating system desktop; (ii) an animated and network-interactive screen saver application; and (iii) a scrolling ticker application.

1.5 "Confidential Information" means: (i) any trade secrets relating to either party's product plans, designs, costs, prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how; and (ii) the specific terms and conditions of this Marketing Agreement. "Confidential Information" shall not include information that: (i) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving party; (ii) is known and has been reduced to tangible form by the receiving party at the time of disclosure and is not subject to restriction; (iii) is independently developed or learned by the receiving party without reference to any Confidential Information of the disclosing party; (iv) is lawfully obtained from a third party that has the right to make such disclosure; or (v) is made generally available by the disclosing party without restriction on disclosure.

1.6 "Content" means data, text, audio files, video files, graphics files, photographs or other materials provided for use on services such as the PointCast Network, MSN, MSNBC and the like.

1.7 "Content Rotation" means the sequential time segments managed by a Client during which the Selected Content and associated advertising is displayed within the Client's display elements.

1.8 "End User" means a third-party customer or potential customer, including corporate and similar direct end user customers, to whom Content is delivered through a Client for such customer's or potential customer's use and not for further sublicense or distribution.

1.9 "Excluded Territory" means any locale which the parties are not able to reach a good faith agreement to include in the Territory pursuant to the procedures described in Section 3.3(g).

1.10 "Existing Product Inventory" means products of a party hereto which have been manufactured or reproduced prior to termination or expiration of the Agreement, but not yet sold as of termination or expiration, provided that such products of a party shall not exceed a quantity reasonable to carry as inventory in the ordinary course of business and in relation to the quantities distributed prior to termination or expiration.

1.11 "First Tier ICP" means an ICP which is given "first tier" or "premier" status on Active Desktop. First Tier ICPs are generally given comparable placement on the Active Desktop to Microsoft's own media properties (such as MSN), and are distributed as part of Active Desktop on all media (including World Wide Web distribution, OEM, and retail) and in a manner no less favorable than the Active Desktop distribution provided to MSN. First tier or premier status means a Pre-Configured Channel, of which Microsoft intends there will be no more that ten (10) third party ICPs (and, approximately, three (3) Microsoft media Channels) classified as such in the first year following the initial commercial release of Active Desktop. Microsoft may elect to segregate First Tier/Premiere ICPs into two (2) separate groups, such as a group for consumer/home use, a group for corporate/business use, or comparable groupings as Microsoft may reasonably select), in which case there may be up to ten (10) third party ICPs in each of the two aforementioned groups.

1.12 "ICP" means independent content providers which develop their own Content and/or which aggregate and distribute Content from other developers.

1.13 "Intellectual Property" means all proprietary rights owned or controlled throughout the world, including, but not limited to, copyrights, trade secrets, trademarks, and licenses thereto, and patent licenses, but not including Patents.

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1.14 "Internet Explorer" means Microsoft's WWW browser and related Internet client technology for all Platforms as is marketed by Microsoft under the name "Internet Explorer", including successor or replacement versions thereof, whether or not called the "Internet Explorer."

1.15 "Licensee(s)" shall include any third party licensee of a party's technology, including, but not limited to OEM, retail and other distributors, and End Users of a party's products and/or services.

1.16 "Microsoft Internet Technology" means Internet Explorer, Active Desktop, Microsoft's Internet Information Server software technology for the Windows NT Platform, and related technologies.

1.17 "MSN" means the Microsoft Network online information service.

1.18 "Optional Content" means Content that is available for selection by an End User on a particular Channel or Sub-Channel, but which is not the pre-configured default Content for that Channel or Sub-Channel.

1.19 "Other Browsers" means third party software and related client technology for any Platform (other than Internet Explorer) that is (i) designed to view, render, browse or otherwise interact with Content on the Internet, the WWW and/or other public networks now existing or hereafter created, and/or which includes Client functionality and (ii) developed by a third party and which ranks in the top two (exclusive of Internet Explorer) most widely used browsers for each Platform, as such use is measured by the average of Browserwatch (http://browserwatch.iworld.com/stats/stats.html) and Interse (http://www.interse.com/webtrends/) as of January 1, 1997.

1.20 "Patents" means: (i) any and all patents (or the inventions, ideas or applications therefor) worldwide, whether currently existing, or later developed, applied for or issuing during the Term and under which patents (or the inventions, ideas or applications therefor) a party, or any of its Subsidiaries, now has, or obtains during the Term, the ability or right to license or grant immunity from suit to the other party; and (ii) all extensions, divisionals, continuations, continuations-in-part, reexaminations and reissue patents of such patents, as well as patent applications thereof, to the extent rights attach to such applications.

1.21 "Platforms" means the operating system platforms supported by Internet Explorer; currently such platforms include Windows 3.xx, Windows 95, Windows NT and Macintosh, including successor or replacement versions thereof.

1.22 "PointCast Private Network" means private, proprietary or limited audience information services delivered by PointCast to End Users, directly or indirectly through third parties, for a fee or by special subscription. "PointCast Private Networks" include a flat-fee or subscriber-based fee offering of PointCast services through a commercial on-line information service.

1.23 "PointCast Network" is PointCast's Channel and Sub-Channels generally available to End Users without charge through the WWW, including successor or replacement versions thereof, whether or not called the "PointCast Network." The PointCast Network does not include PointCast Private Networks. "PointCast Network v2.0" refers to the next scheduled major release version of the PointCast Network and all successor versions thereto, and includes the next scheduled major release of PointCast Client software and all successor versions thereto.

1.24 "Pre-Configured Channel" means a Channel which has an identifying logo/trade mark and associated pointer/URL integrated into the Active Desktop user interface such that the End User is exposed to the Pre-Configured Channel when they first use and/or personalize the Active Desktop and until the End User deletes or changes such configuration.

1.25 "Selected Channel" means a Channel currently selected by the Client End User to be included in the Content Rotation.

1.26 "Selected Content" means, for a Channel or Sub-Channel: (i) the default Content supplied by the Channel provider which cannot be deselected by an End User or customer; and (ii) the optional Content supplied by the Channel provider and currently selected by an End User.

1.27 "Sub-Channel" means a collection of Content provided by a Channel. For example, in its intended configuration for the Active Desktop, PointCast Network is a Channel which contains a Sub-Channel entitled "Sports."

1.28 "Subsidiary" shall mean a corporation, company or other entity, over which a party has sufficient control, either directly or indirectly, so that the party is able to grant a license, release or other immunity from suit to the other party with respect to the corporation, company or other entity's patents. "Sufficient control" is deemed to exist where fifty percent (50%) or more ownership or equity interest (such as voting stock or other interest which conveys the right to vote for the appointment or election of the controlling management) is, now or hereafter, owned or controlled, directly or indirectly, by a party.

1.29 "Term" means the term of this Marketing Agreement which shall be the period commencing upon the Effective Date and ending one (1) year from the first commercial release of a version of Internet Explorer containing Active Desktop, but not later than October 1, 1998, unless earlier terminated in accordance with Section 12.2 or 12.3, or unless extended by Microsoft in accordance with Section 12.1. Unless otherwise expressly stated in this Marketing Agreement, all covenants and license grants are limited to the Term.

1.30 "Territory" means the United States, English-speaking Canada, and any additional countries added in accordance with Section 3.3(g).

1.31 "Transition Date" is the earliest date on which it is commercially practicable for PointCast to market, promote, and distribute Internet Explorer, consistent with PointCast's preexisting written, contractual obligations to third parties, but not later than May 14, 1997. Notwithstanding the foregoing, nothing in this Agreement shall be construed as obligating PointCast to act (or refrain from acting) in any manner which could constitute a breach of such preexisting agreements.

1.32 "Win32" means, collectively, the Windows 95 and Windows NT Platforms.

2. POINTCAST OBLIGATIONS

2.1 Adoption of Current Microsoft Internet Technology. PointCast shall integrate, adopt, market, promote and distribute Microsoft Internet Technology as follows:

(a) *Internet Explorer*. PointCast shall as soon as commercially practicable adopt and integrate Internet Explorer v3.0 with the PointCast Network v2.0 for Win32 and, to the extent technically feasible based on PointCast's then-current technical resources, the Windows 3.xx and Apple Macintosh Platforms. Subject to Sections 2.1(b) and (c) and to Section 2.3, commencing on the Transition Date, PointCast and its Subsidiaries shall, exclusive of any Other Browser, market, promote and, to the extent of PointCast's distribution efforts in the ordinary course of its business, distribute (via WWW download, OEM, retail and direct distribution) the combined PointCast Network v2.0 and Win32 Internet Explorer v3.0 to its End Users on the Win32 Platform.

Subject to Sections 2.1(b) and (c) and to Section 2.3, commencing on the Transition Date, PointCast and its Subsidiaries shall, exclusive of any Other Browser, market, promote and, to the extent of PointCast's distribution efforts in the ordinary course of its business, distribute (via WWW download, OEM, retail and direct distribution) the combined PointCast Network v2.0 and the Windows 3.xx and Macintosh Internet Explorer v3.0 to its End Users on the

appropriate Platforms. Microsoft acknowledges that general availability of the Macintosh version of the PointCast Client may be delayed beyond May 14, 1997.

Subject to Sections 2.1(b) and (c) and to Section 2.3, commencing on the Transition Date, PointCast shall consistently market and promote the PointCast v2.0/Internet Explorer v3.0 combination (and, following its release, for Win32, the PointCast Network/Active Desktop combination) as the sole preferred implementation on the appropriate Platforms. Subject to Sections 2.1(b) and (c) and to Section 2.3, commencing on the Transition Date, the PointCast Client for all Platforms shall be modified to include (i) subject to PointCast's reasonable user interface design constraints, an "Install Internet Explorer" button prominently in the lower left corner of the main browser window (which need only appear if Internet Explorer is not already installed, in which case no alternative browser button shall be displayed), (ii) user configuration options to enable the End User to locate and use an already-installed version of Internet Explorer, and (iii) user configuration options to enable the End User to make the PointCast co-installed Internet Explorer the user's default browser. PointCast shall use reasonable commercial efforts to engage in advertising (consistent with historical budgets) and/or other promotional efforts intended to cause PointCast users to download two million (2,000,000) copies of Internet Explorer during the Term. PointCast's first year obligations to pay the fee under Section 3.3(b) shall be credited by Three Million Dollars ($3,000,000) in return for PointCast's good faith marketing and distribution efforts in promoting Internet Explorer with PointCast.

(b) *Distribution Exceptions.* For Internet download versions of the PointCast Network V2.0, PointCast and its Subsidiaries may offer as an option to End Users who request it, a version of the PointCast Client software that contains PointCast's integrated proprietary WWW browser promoted as being intended for dial-up modem users, provided that such version is also compatible with and easily integrated with the PointCast Network v2.0/Internet Explorer v3.0 combination when the same is downloaded and/or installed separately. Further, PointCast and its Subsidiaries shall be entitled to offer, as an option to OEMs, a version of the PointCast Client software that contains PointCast's integrated proprietary WWW browser, provided that such version: (i) is also compatible with and easily integrated with the PointCast Network v2.0/Internet Explorer v3.0 combination when the same is downloaded and/or installed separately; and (ii) is offered only to OEMs that specify a need for such version despite reasonable efforts by PointCast to get such OEMs to use the PointCast Network/Internet Explorer combination.

(c) *Online Services.* For any Platform, PointCast and its Subsidiaries will not be precluded from promoting, marketing and distributing a version of its Client software in conjunction with software from America Online, CompuServe and Prodigy with the default browser specified by such online service providers.

(d) *WWW Site.* Commencing on the Transition Date, PointCast shall promote Microsoft as a premier sponsor on www.pointcast.com. Such promotion will include, but not be limited to: (i) placement of the Microsoft logo on the site; (ii) placement of such logo to be at least as prominent as any other sponsor of the site; and (iii) placement of the Internet Explorer logo as appropriate on its software download pages on the site. PointCast shall follow Microsoft's reasonable logo usage and branding guidelines as provided from time to time by Microsoft. PointCast's WWW site design shall remain under exclusive control of PointCast.

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2.2 PointCast Content Restrictions, Support of Active Desktop and Future Microsoft Internet Technology.

(a) *Content Restrictions.* Beginning on the Effective Date and through the Term of this Agreement, PointCast agrees that it and its Subsidiaries will not, directly or indirectly, market, promote, distribute or license for distribution the PointCast Network to the companies producing Other Browsers for distribution, marketing or promotion by such companies. Notwithstanding the foregoing, PointCast shall be entitled to continue to honor its existing written contractual commitments effective as of the Effective Date.

(b) *Active Desktop Support.* Subject to Section 2.3, commencing on the Transition Date and through the Term of this Agreement, for all Platforms on which Active Desktop is available, PointCast and its Subsidiaries shall vigorously market, promote and distribute the PointCast Network and Active Desktop implementation as their default, preferred, long term delivery/access solution. For all Content and advertising delivered via the Active Desktop, Pointcast shall on a basis similar to that required of other First Tier ICPs, utilize and support current and future standards, formats and protocols (including, but not limited to, HTML standards, and ActiveX) integrated into Internet Explorer.

2.3 Exceptions.

(a) *Pre-Existing, Written, Contractual Agreements.* It shall not be a breach of this Marketing Agreement for a third party with whom PointCast has a pre-existing, written, contractual agreement to continue to use, reproduce, distribute, market and promote the PointCast Network for a wind down period following the term of such agreement in order to deplete inventory of such products manufactured or reproduced during the term of such agreement, such period not to extend beyond December 1, 1997.

(b) *Compatibility.* PointCast and its Subsidiaries shall be able to develop and make any and all PointCast products, services and technologies (including without limitation the PointCast Network and PointCast Client or server technologies) compatible with Other Browsers and non-Microsoft Internet Technology. The provisions of this Section 2.3(b) shall in no way diminish PointCast's obligations under Sections 2.1(a) and 2.2(b). PointCast and its Subsidiaries may also market and promote the foregoing compatibility as reasonable in order to provide full information on its products to existing or potential distributors, End Users or other customers, provided that commencing on the Transition Date, such marketing and promotion shall be limited to methods which are consistent with the spirit of PointCast's obligations under this Marketing Agreement to promote and adopt Internet Explorer as its sole preferred browser platform.

(c) *End Users.* PointCast and its Subsidiaries shall be entitled to promote, market, distribute, or license the PointCast Network directly and indirectly to any person or entity whatsoever as an End User.

(d) *Excluded Territories.* PointCast's and its Subsidiaries' obligations to market, promote and distribute Internet Explorer and/or Active Desktop and to do so exclusive of any Other Browser, and PointCast's obligations and restrictions with respect to distribution of the PointCast Network, shall not apply to Excluded Territories.

2.4 1997 Upgrade Promotion. After the Transition Date, the parties shall work together to define an online marketing/promotion campaign with the goal of upgrading PointCast Network v2.0 End Users to use Internet Explorer 3.x as the default web browser embedded within and distributed with the PointCast Client and as such users' primary software for general browsing use. After the Transition Date, PointCast shall carry out such campaign by implementation of advertising (consistent with

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historical budgets) and automatic upgrade programs to PointCast Network v2.0 End Users. PointCast shall use reasonable commercial efforts to engage in such advertising and other promotional efforts as will be intended to cause at least one million (1,000,000) PointCast users to upgrade to Internet Explorer by July 30, 1997, and shall continue the promotion and upgrade program longer as mutually agreed. PointCast's first year obligations to pay the fee under Section 3.3(b) shall be credited by Five Million Dollars ($5,000,000) in return for PointCast's promotion, marketing distribution and technical efforts specified in this Section 2.4.

3. MICROSOFT OBLIGATIONS

3.1 Development Support. Microsoft shall, at its expense, provide reasonable direct engineering support of PointCast's obligations under Sections 2.1(a), 2.1(b), and 2.2(b) and consultant engineering support of PointCast's efforts under Section 4.2.

3.2 Content. Microsoft shall reasonably assist PointCast with getting current and new PointCast Content partners on the PointCast Network. Microsoft shall work with PointCast to explore and establish where appropriate the distribution by PointCast of Microsoft Content, including Expedia and Sidewalk. Microsoft shall assign one of its employees to be a liaison and evangelist to promote the Content relationship between the parties.

3.3 First Tier ICP. During the Term, commencing on the Transition Date, Microsoft shall make PointCast and its Subsidiaries a First Tier ICP throughout the Territory.

(a) *Version.* Unless otherwise specifically stated in this Marketing Agreement, PointCast shall be included as a First Tier ICP only in the major local language version of Active Desktop distributed in each country in the Territory. For each such country, in no event will the appropriate version of PointCast Network be distributed by Microsoft to less than eighty percent (80%) of the End Users receiving Active Desktop for each First Tier ICP group where PointCast is entitled to be included. Microsoft shall use the PointCast trademark and PointCast logo as appropriate and subject to user interface and design constraints in order to designate the PointCast Network as a First Tier ICP.

(b) *Cost.* Subject to the credits provided in this Marketing Agreement, for the first year after general commercial release of Active Desktop, PointCast shall pay Microsoft a fee of Ten Million Dollars ($10,000,000) for being a First Tier ICP. Subject to the additional credits provided in this Marketing Agreement, should the Term be extended by an additional (1) year period, as set forth in Section 12.1, PointCast shall pay a further fee of Ten Million Dollars ($10,000,000) for being a First Tier ICP for such additional one (1) year of the Term.

(c) *Content Distribution.* As part of the distribution of all OEM and retail CD-ROM versions of Active Desktop within the Territory, Microsoft shall include PointCast "teaser" Content and associated ActiveX controls. The total size of the ActiveX controls and PointCast "teaser" Content shall not exceed two and one-half megabytes. Microsoft shall have no obligation to distribute PointCast Content in any media other than CD-ROM, other than the Content necessary to facilitate PointCast as a First Tier ICP as consistent with other First Tier ICPs and MSN as distributed on Active Desktop. Microsoft will make commercially reasonable efforts to cause all OEM distributors who are distributing Active Desktop in the Territory to include the appropriate PointCast "teaser" Content and associated ActiveX controls.

(d) *Channel Guide.* During the Term and if Microsoft offers its own branded Channel Guide on Active Desktop, Microsoft shall link such Microsoft-branded Channel Guide to PointCast's channel guide.

(e) *Content Grouping.* In the event that Microsoft elects to separate First Tier ICPs into two (2) content groups (e.g. a group for the consumer market and a group for the corporate market), PointCast shall be included by default in both such groups, provided that PointCast (i) creates and actively markets through Active Desktop and other distribution channels a different Channel brand (e.g., "PointCast at Home" or "PointCast at Work") for each group; (ii) the content delivered through each PointCast Channel is of particular relevance to and appropriate for the group (e.g., news and weather channels might be in both a "consumer group" and a "corporate group" whereas sports and lifestyles might be only in the consumer group while companies and industries might only be in the "corporate group"); and (iii) each separately branded PointCast Channel has at least two (2) Sub-Channels configured for such Channel that are unique (i.e. not in both the consumer and corporate groups), relevant to, and produced specifically for, the group in which it is included (consumer or corporate).

(f) *Distribution Outside Territory.* Microsoft may, at its sole option and upon sixty (60) days notice to PointCast, include the English-language PointCast Network for Active Desktop as a First Tier ICP in versions of Active Desktop shipped outside of the Territory. Microsoft may terminate such distribution of the PointCast Network at its convenience upon ninety (90) days notice to PointCast. PointCast may terminate Microsoft's right to such distribution in a specific territory after a failure of good faith negotiations to extend this Agreement to such territory as provided for in Section 3.3(g), below. Such termination will become effective within sixty (60) days after notice from PointCast, provided that Microsoft's direct and indirect distribution rights with respect to Existing Product Inventory affected by such termination shall continue in effect.

(g) *Extension of the Territory.* PointCast has indicated its intent to extend its Content aggregation and distribution business to international locales in Asia, Europe, and elsewhere. The parties agree to negotiate in good faith to extend the terms of Section 3.3 for the Term to locales in which PointCast establishes a significant business presence in order to distribute local-language Content of comparable quality to PointCast's North American Content. PointCast and its Subsidiaries agree not to enter into agreements for the marketing or distribution in any region outside of the Territory for the PointCast Network or for the PointCast Client with (i) developers of Other Browsers, and (ii) subject to Microsoft's consent, which shall not be unreasonably withheld, with the largest distributor of Other Browsers in each such region (that is the distributor in such region with largest unit volume shipments of such Other Browsers within such region over the preceding six (6) month period), unless PointCast has first completed good faith negotiations with Microsoft, over a period of at least forty-five days, to extend the Territory to include such region under this Agreement as contemplated in this Section 3.3(g).

(i) Microsoft agrees to include PointCast as a First Tier ICP for the Term in Japan, Korea, Australia, Hong Kong, Singapore, Malaysia, United Kingdom, Germany, Sweden, France, Italy, French-speaking Canada, and Brazil (the "Additional Territory") provided that PointCast's operation that supports each such country meets the following "Minimum Local ICP Requirements." For each country in the Additional Territory, the Minimum Local ICP Requirements shall be that PointCast:

(1) Provide "General News," "Sports," Weather," and "Industry" Content. Such Content must be obtained from one (1) of the top three (3) local [illegible] vendors for each category, localized in the country language, and the Content must be of production quality comparable to that offered by PointCast in North America.

(2) Include at least three (3) optional ICP Channels, each of which is obtained from one (1) of the top three (3) Content providers in their category and

(as measured by popularity in the category in the country). Such Channels may include local newspapers, magazines or other ICPs as the parties may agree.

(3) Implement PointCast's promotion of Microsoft as a premier sponsor of the PointCast WWW site presence for the country comparable to that specified in Section 2.1(d).

(ii) PointCast acknowledges that prior to execution of a Local Approval Memo, Microsoft's local country management may change the Minimum Local ICP Requirements in each country by providing one hundred and twenty (120) days notice to PointCast. Microsoft will make commercially reasonable efforts to obtain from Microsoft's local country management in every country in the Additional Territory advance approval of First Tier ICP status for PointCast in such country for the Term, conditioned upon satisfaction by PointCast of the Minimum Local ICP Requirements for that country. Microsoft will attempt to obtain such advance approval within two (2) weeks from the Effective Date.

(iii) As approval is obtained from Microsoft local management in each country in the Additional Territory, written confirmation of that approval (based upon the Minimum Local ICP Requirements as described above) will be provided by Microsoft to PointCast (the "Local Approval Memo"), which will remain effective for the Term, unless otherwise mutually agreed. For purposes of this Section 3.3(g), and subject to Microsoft's prior written approval, PointCast will be entitled to include Content., as part of the PointCast Network, provided through a joint venture which is at least twenty-five percent (25%) owned by PointCast and which may be established in connection with arrangements by PointCast to aggregate localized Content.

(iv) PointCast will be permitted to disclose to prospective Content providers, under terms mutually agreed to by the parties hereto within two weeks after the Effective Date in order to preserve confidentiality, the terms of this Section 3.3(g) and the Local Approval Memo for the relevant country or countries. The localized version of the PointCast Network will be included in the local language version of Active Desktop for each relevant country as soon as commercially practicable upon satisfaction of the express criteria for inclusion as described in this Section 3.3(g).

(v) For any country in the Additional Territory where Microsoft does not obtain advance approval within two (2) weeks after the Effective Date, Microsoft shall make commercially reasonable efforts to rapidly introduce PointCast to appropriate Microsoft local management in such country and to facilitate PointCast reaching agreement with such local management approving PointCast's participation as a First Tier ICP in such country. In the event Microsoft and PointCast are unable to obtain such approval for any country, upon satisfying the Minimum Local ICP Requirements for such country, PointCast will be included with the Active Desktop in that country as a "Second Tier ICP." "Second Tier ICPs" will be included in the Active Desktop (via logo placement and URL linking) with a group of other ICPs of similar quality, all at one level lower in the display hierarchy than First Tier ICPs.

(h) *Setup & Installation Requirements.* Microsoft's obligations under this Section 3.3 are subject to PointCast meeting the reasonable setup and installation specifications that Microsoft requires for all third party First Tier ICPs. No such requirement will be commercially burdensome for PointCast, and Microsoft will provide reasonable technical support to PointCast to assist it in meeting the foregoing requirements.

3.4 Early Releases. During the Term, Microsoft shall provide PointCast with early (alpha, beta and, where practical, pre-alpha) releases of Active Desktop and Internet Explorer to use and reproduce for internal development purposes only

3.5 Licenses Microsoft will license to PointCast Internet Explorer as set forth in Section 5.

3.6 Microsoft Promotion of PointCast. In order to assist PointCast's efforts in developing its "push" content business on Microsoft platform technology, Microsoft agrees to promote the PointCast Network in conjunction with the Active Desktop where Microsoft promotes the entire group of third party First Tier ICPs of the Active Desktop.

4. JOINT OBLIGATIONS

4.1 Announcement. The parties shall issue a joint press release announcing their relationship at Microsoft's Active Desktop platform launch, currently planned for Internet World on December 9, 1996. Microsoft's announcement regarding PointCast will be at least as prominent as that provided any other third party ICP partner. At a minimum, press materials will highlight: (i) that PointCast has selected Microsoft's Internet Technology as its "strategic" next generation development, operations, and delivery platform for the PointCast Network; and (ii) that Microsoft recognizes PointCast as a leader in delivering broadcast Content on the Internet and has therefore teamed with PointCast to be a premier supplier of Content for users of the Active Desktop. The precise content and timing of such press release shall be mutually agreed upon by the parties.

4.2 Differentiated Content. Commencing upon the Transition Date and continuing through the Term, the parties shall define four (4) easily described and highly visible components of PointCast Network Content that will exhibit substantially superior features or usability when used with Internet Explorer as compared to Other Browsers or PointCast's own browser ("Differentiated Content"). The parties intend that such Differentiated Content shall make the PointCast Network a premier example of the added-value differentiation enabled by Microsoft Internet Technology. PointCast shall be responsible for implementing and maintaining the Differentiated Content. Microsoft shall support PointCast's development/delivery of the Differentiated Content by supplying limited consulting and support, and with non-exclusive royalty-free licenses to certain Active X controls as-needed for PointCast's requirements. PointCast's first year obligations to pay the fee under Section 3.3(b) shall be credited by Two Million Dollars ($2,000,000) for PointCast's efforts under this Section.

4.3 Marketing Coordination. Each party shall appoint a representative to coordinate marketing plans, advertising guidelines, and other promotional messages to be used by the respective parties in their promotions of one another. Each party shall use reasonable commercial efforts to confirm any substantive changes in such plans and messages with the other party prior to executing marketing or advertising promotions with any such changed messages or plans.

5. RIGHTS & LICENSES

5.1 Intellectual Property License to Microsoft. During the Term, PointCast hereby grants to Microsoft, under all PointCast Intellectual Property, a nonexclusive, irrevocable, royalty-free, fully paid up, worldwide right and license to reproduce, license, rent, lease or otherwise distribute, and have reproduced, licensed, rented, leased or otherwise distributed, to and by third parties (including in conjunction with or as integrated with Active Desktop or Internet Explorer), PointCast "teaser" Content, associated ActiveX controls and/or object code versions of the PointCast Network v2.0 Client software, subject to the terms set forth herein concerning use of PointCast's standard viewer license, including the right to sublicense third parties to do the same. PointCast shall include as part of the installation program for the PointCast Network Client a feature requiring a viewer to review and agree to PointCast's viewer license agreement. Microsoft shall distribute the PointCast Network Client to end users in such a way that such feature remains unimpaired, and Microsoft shall obligate its distribution channels to do the same. Microsoft shall use commercially reasonable efforts to enforce such distribution agreements with regard to mandatory inclusion of the PointCast viewer

license in conjunction with distribution of the PointCast Network Client.

5.2 Internet Explorer. During the Term, Microsoft hereby grants to PointCast, under all Microsoft Intellectual Property, a nonexclusive, royalty-free, fully paid up, worldwide right and license (i) to reproduce and distribute Internet Explorer, either on a stand-alone basis or in conjunction with PointCast products or services, under Microsoft's standard terms and conditions (as listed on http://www.microsoft.com/ie/iedist.htm or successors thereto, which will remain adequate to permit PointCast to perform its obligations under Section 2); and (ii) during the Term, to sublicense to PointCast OEMs, distributors and resellers the rights to reproduce and distribute Internet Explorer in conjunction with PointCast products or services. PointCast shall submit a written report to Microsoft within forty-five (45) days of the end of each calendar quarter during which it or any of its sublicensees distributes, directly or indirectly, any copies of Internet Explorer, reporting the number of copies of Internet Explorer which are distributed by PointCast or any of its sublicensees under the foregoing license grants. If Microsoft's aforementioned standard terms and conditions are inconsistent with this Marketing Agreement, the terms of this Marketing Agreement shall prevail.

5.3 Patent Issues.

(a) *Patent License.* During the Term and thereafter to the extent necessary to dispose of and use the Existing Product Inventory, (i) Microsoft hereby grants to PointCast and its Subsidiaries, under Microsoft's Applicable Patent(s) Claims, a worldwide, non-exclusive, royalty-free, paid up right and license to make, have made, use, sell, have sold, offer for sale, license, or otherwise transfer and import PointCast technologies, products, and services, and (ii) PointCast hereby grants to Microsoft and its Subsidiaries, under PointCast's Applicable Patent(s) Claims, a worldwide, non-exclusive, royalty-free, paid up right and license to make, have made, use, sell, have sold, offer for sale, license, or otherwise transfer and import Microsoft technologies, products and services. The foregoing licenses extend to each party, and its End Users, distributors, Subsidiaries, customers or other licensees with respect to the transfer and use of products sold, licensed or otherwise transferred during the Term and the Existing Product Inventory. Neither party shall use the licenses granted in this Section for the purpose of acting as a foundry for a third party.

(b) *Release.* Each party, on behalf of itself and its current and future Subsidiaries, hereby irrevocably and perpetually releases the other party, and any End User, distributor, Subsidiary, customer or other licensee of the other party, for claims of infringement of any Applicable Patent(s) Claims arising from the manufacture, use, sale, offer for sale, import or license of Microsoft or PointCast technologies, products or services prior to the Effective Date if such activities would have been licensed pursuant to the licenses granted in Section 5.3(a) if they had occurred after the Effective Date (and before the expiration of the Term).

5.4 Validity, Enforceability, or Infringement. Nothing contained in this Marketing Agreement shall be construed as an acknowledgment or recognition that either party's patents or patent applications are valid, enforceable, or infringed. No public statement, advertisement, product literature, or any other communication from either party shall refer to this Marketing Agreement in support of an assertion that a party's products, technologies, or services are licensed under the other party's patent(s).

6. NONEXCLUSIVE; RESERVATIONS OF RIGHTS

6.1 Microsoft. Except solely as provided in Section 3.3, 3.6, 5.2, 5.3(a) and 8, nothing in this Marketing Agreement will be construed as restricting Microsoft's ability to license, develop, sub-license, manufacture or distribute Internet Explorer, Active Desktop or any other technology, for itself or for any third party, or to include third party Client software with Active Desktop or any other Microsoft product.

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6.2 PointCast. Except solely as provided in Sections 2.1(a) and (d), 2.2, 2.4, 3.3(f), (g) and (h), 4.2, 5.1, 5.3(a) and 8, nothing in this Marketing Agreement will be construed as restricting PointCast's ability to license, develop, sub-license, manufacture or distribute the PointCast Network, PointCast Client technologies, PointCast Private Network, or any other technology, for itself or for any third party, or to include third party software with the PointCast Network or any PointCast product.

6.3. Other Rights Reserved. Neither party grants any license in this Marketing Agreement under its Intellectual Property, Confidential Information, or Patents except as expressly provided in Sections 2, 3, 5, 7, and 8.

7. TRADEMARKS

7.1 Microsoft Trademarks. PointCast is hereby granted a non-exclusive license (under Microsoft's standard terms as listed on http://www.microsoft.com/ie/iedist.htm or successors thereto), to use Microsoft trademarks in connection with PointCast performing its obligations under Section 2. Any fair use, or similar use that is compliant with applicable local law, by PointCast of "Microsoft Internet Explorer," "Active Desktop" or other Microsoft marks in a truthful context shall not require Microsoft's advance approval unless such use suggests or implies endorsement by Microsoft of PointCast's or any other parties' products or services.

7.2 PointCast Trademarks. Microsoft is hereby granted a non-exclusive license to use those PointCast trademarks relating to the PointCast Network (other than specific marks related to PointCast's third party Content) in Active Desktop and any advertising, marketing, technical or other materials related thereto which are distributed, transmitted or promoted by Microsoft or its distributors for the purpose of furthering distribution of the PointCast Network under this Agreement. Such use shall be in accordance with PointCast's then current trademark guidelines, particularly including, without limitation, appropriate quality assurance requirements, provided that such guidelines shall not require any prior approval for the trademark use. The aforementioned guidelines shall be provided and reasonably updated by PointCast from time to time. If the trademark guidelines are amended or any PointCast trademarks are modified or added, Microsoft and its distributors shall have the right to deplete or have depleted existing and contractually committed for inventories of products and materials which may not be in compliance with the amended guidelines or modified/added PointCast trademarks and shall have a reasonable transition period in which to implement compliance. Microsoft agrees not to register any PointCast trademarks without PointCast's express prior written consent. PointCast shall promptly notify Microsoft of any finding of infringement or invalidity of any PointCast trademarks in any jurisdiction. Nothing herein shall require Microsoft to use any PointCast trademark in any manner, except as expressly provided in Section 3.

Notwithstanding the foregoing, any fair use, or similar use that is compliant with applicable local law, by Microsoft of PointCast's trademarks in a truthful context shall not require PointCast's advance approval unless such use suggests or implies endorsement by PointCast of Microsoft's or any other parties' products or services.

8. CONFIDENTIALITY

8.1 Each party shall protect the other's Confidential Information from unauthorized dissemination and use with the same degree of care that such party uses to protect its own like information. Neither party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Marketing Agreement. Each party will use its best efforts not to disclose to third parties the other's Confidential Information without the prior written consent of the other party. Except as expressly provided in this Marketing Agreement, no ownership or license rights are granted in any Confidential Information.

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8.2 The parties' obligations of confidentiality under this Marketing Agreement shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's Confidential Information. Further, either party shall be free to use for any purpose the residuals resulting from access to or work with such Confidential Information, provided that such party shall maintain the confidentiality of the Confidential Information as provided herein. The term "residuals" means information in non-tangible form, which may be retained by persons who have had rightful and good faith access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. Neither party shall have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, this Section 8.2 shall not be deemed to grant to either party a license under the other party's copyrights or patents.

8.3 The other provisions of this Marketing Agreement notwithstanding, either party will be permitted to disclose the terms and conditions of this Marketing Agreement to their outside legal and financial advisors and to the extent required by applicable law, including through the filing and disclosure of material agreements that may be required under the securities laws; provided however that before making any such required filing or disclosure, the disclosing party shall first give written notice of the intended disclosure to the other party, within a reasonable time prior to the time when disclosure is to be made, and the disclosing party will exercise best efforts, in cooperation with the other party, consistent with reasonable time constraints, to obtain confidential treatment for all non-public and sensitive provisions of this Marketing Agreement, including without limitation dollar amounts and other numerical information.

8.4 The provisions of this Marketing Agreement supersede the agreement dated September 12, 1996 concerning confidentiality and confidential information entered into by the parties, and such previous agreement is terminated by this Marketing Agreement. The parties agree that all confidential information and materials disclosed by either of them to the other under the terms of such previous agreement are protected under the terms of this Marketing Agreement, including without limitation this Section 8.

9. WARRANTIES

9.1 PointCast. PointCast warrants and represents that:

(a) It has the full power to enter into this Marketing Agreement and grant the license rights set forth herein;

(b) To the best of its knowledge, all PointCast technology, trademarks and software licensed under this Marketing Agreement do not infringe any copyright, patent, trade secret, or other proprietary right held by any third party;

(c) It has all necessary rights to distribute the Content and data provided by or through the PointCast Network; and

(d) It will ensure that the PointCast Network does not: (i) broadcast defamatory or libelous material or material or which discloses private or personal matters concerning any person, without such person's consent; (ii) permit to appear or be uploaded any messages, data, images or programs which are, by law, obscene, profane or pornographic; or (iii) permit to appear or be uploaded any messages, data, images or programs that would knowingly violate the property rights of others, including unauthorized copyrighted text, images or programs, trade secrets or other confidential proprietary information, or trademarks or service marks used in an infringing fashion.

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9.2 Microsoft. Microsoft warrants and represents that:

(a) It has the full power to enter into this Marketing Agreement and grant the license rights set forth herein; and

(b) To the best of its knowledge, Internet Explorer and Active Desktop do not infringe any copyright, patent, trade secret, or other proprietary right held by any third party.

10. DISCLAIMER OF FURTHER WARRANTIES

10.1 EXCEPT AS EXPRESSLY WARRANTED IN SECTION 9.1, ALL POINTCAST TECHNOLOGY, SOFTWARE OR TRADEMARKS LICENSED UNDER THIS MARKETING AGREEMENT AND POINTCAST CONFIDENTIAL INFORMATION ARE PROVIDED TO MICROSOFT "AS IS" WITHOUT FURTHER WARRANTY OF ANY KIND. POINTCAST DISCLAIMS ALL FURTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT, WITH RESPECT THERETO.

10.2 EXCEPT AS EXPRESSLY WARRANTED IN SECTION 9.2, INTERNET EXPLORER AND THE MICROSOFT CONFIDENTIAL INFORMATION ARE PROVIDED TO POINTCAST "AS IS" WITHOUT FURTHER WARRANTY OF ANY KIND. MICROSOFT DISCLAIMS ALL FURTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT, WITH RESPECT THERETO.

11. INDEMNITY

11.1 Indemnity by PointCast.

(a) PointCast shall, at its expense and Microsoft's request, defend any claim or action brought against Microsoft, and Microsoft's Subsidiaries, directors, officers, employees, agents and independent contractors, to the extent it is based upon a claim that, if true, would constitute a breach of a PointCast warranty under Section 9.1 ("PointCast Claims"), and PointCast will indemnify and hold Microsoft harmless from and against any costs, damages and fees reasonably incurred by Microsoft, including but not limited to fees of attorneys and other professionals, that are attributable to such PointCast Claims. Microsoft shall: (i) provide PointCast reasonably prompt notice in writing of any such PointCast Claims and permit PointCast, through counsel chosen by PointCast and reasonably acceptable to Microsoft, to answer and defend such PointCast Claims; and (ii) provide PointCast information, assistance and authority, at PointCast's expense, to help PointCast to defend such PointCast Claims. PointCast will not be responsible for any settlement made by Microsoft without PointCast's written permission, which permission will not be unreasonably withheld.

(b) Unless PointCast obtains for Microsoft a complete release of all PointCast Claims thereunder, PointCast may not settle any PointCast Claim under this Section 11.1 on Microsoft's behalf without first obtaining Microsoft's written permission, which permission will not be unreasonably withheld. In the event Microsoft and PointCast agree to settle a PointCast Claim, PointCast agrees not to publicize the settlement without first obtaining Microsoft's written permission, which permission will not be unreasonably withheld.

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11.2 Indemnity by Microsoft.

(a) Microsoft shall, at its expense and PointCast's request, defend any claim or action brought against PointCast, and PointCast's Subsidiaries, directors, officers, employees, agents and independent contractors, to the extent it is based upon a claim that, if true, would constitute a breach of a Microsoft warranty under Section 9.2 ("Microsoft Claims"), and Microsoft will indemnify and hold PointCast harmless from and against any costs, damages and fees reasonably incurred by PointCast, including but not limited to fees of attorneys and other professionals, that are attributable to such Microsoft Claims. PointCast shall: (i) provide Microsoft reasonably prompt notice in writing of any such Microsoft Claims and permit Microsoft, through counsel chosen by Microsoft and reasonably acceptable to PointCast, to answer and defend such Microsoft Claims; and (ii) provide Microsoft information, assistance and authority, at Microsoft's expense, to help Microsoft to defend such Microsoft Claims. Microsoft will not be responsible for any settlement made by PointCast without Microsoft's written permission, which permission will not be unreasonably withheld.

(b) Unless Microsoft obtains for PointCast a complete release of all Microsoft Claims thereunder Microsoft may not settle any Microsoft Claim under this Section 13.2 on PointCast's behalf without first obtaining PointCast's written permission, which permission will not be unreasonably withheld. In the event PointCast and Microsoft agree to settle a Microsoft Claim, Microsoft agrees not to publicize the settlement without first obtaining PointCast's written permission, which permission will not be unreasonably withheld.

12. TERMINATION

12.1 Term. This Marketing Agreement shall commence upon the Effective Date and continue in full force and effect until the earlier of (i) termination for cause as set forth in Section 12.2, or (ii) expiration of the Term. Upon written notice to PointCast delivered not later than one hundred and twenty (120) days prior to the end of the initial Term, Microsoft may, at its sole option, extend this Agreement for one (1) additional twelve (12) month period immediately following the initial Term ("Extended Term"), in which case PointCast shall pay for such Extended Term the Ten Million Dollar ($10,000,000) fee set forth in Section 3.3(b), but such fee shall be offset in its entirety in return for PointCast's efforts as follows: (i) Four Million Dollars ($4,000,000) for efforts to create and maintain Differentiated Content during the Extended Term, pursuant to Section 4.2; and (ii) Six Million Dollars ($6,000,000) for efforts to promote and distribute Internet Explorer pursuant to Section 2.1(a) during the Extended Term.

12.2 Termination By Either Party For Cause. Either party may suspend performance and/or terminate this Marketing Agreement immediately upon written notice at any time if:

(a) The other party is in material breach of any material warranty, term, condition or covenant of this Marketing Agreement, other than those contained in Section 8, and has failed to cure that breach within sixty (60) days after written notice thereof; or

(b) The other party is in material breach of Section 8.

12.3 Termination by PointCast for Delay. In the event that as of October 1, 1997, Active Desktop has not been shipped for general release, then PointCast may, at PointCast's sole option and upon fifteen (15) days prior written notice, elect to: (i) terminate this Agreement; or (ii) require Microsoft to either, at Microsoft's sole option and upon a further fifteen (15) days prior written notice, (a) distribute PointCast Network v2.0 (or a subsequent version) with Internet Explorer v3.0 (and all subsequent versions released during the distribution period) for twelve (12) months following initial distribution of such products in conjunction with each other; whereupon the Agreement shall continue in effect in

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accordance with its terms; or (b) pay PointCast a one-time fee of Five Million Dollars ($5,000,000) and terminate this Agreement. The foregoing remedies shall constitute PointCast's sole and exclusive remedies in the event of the occurrences described herein, and Microsoft shall not be liable to PointCast for any damages or other remedy for termination or other choice made by PointCast under this Agreement.

12.4 Effect of Termination.

(a) Neither party shall be liable to the other for damages of any sort resulting solely from terminating this Marketing Agreement in accordance with its terms.

(b) Prior to the expiration of the Term, should this Marketing Agreement be terminated by Microsoft under Section 12.2, Microsoft's licenses under Sections 5.1 and 5.3 shall survive the effective date of such termination until six (6) months following termination, but in no event beyond the Term.

12.5 Settlement of Fees and Credits. Payment and/or accounting of fees and credits by each party shall occur at the end of the initial Term and the end of the Extended Term (if any). In the event this Marketing Agreement is terminated prior to expiration of the Term or any Extended Term, the parties agree that all fees and credits due under this Marketing Agreement shall be pro-rated in a uniform manner to reflect the time elapsed during such Term or Extended Term.

12.6 Preservation of Remedies. Payment of fees or credits due under this Agreement shall not be a bar to a party's pursuing any remedy for breach provided for under this Agreement or applicable law.

12.7 Survival. In the event of termination or expiration of this Marketing Agreement for any reason, Sections 8, 9, 10, 11, 12, 13 and 14 shall survive termination.

13. Limitation Of Liabilities

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR OTHER RELATED OR SIMILAR DAMAGES (BUT NOT INCLUDING DIRECT DAMAGES) WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE FOR A BREACH OF THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION SHALL HAVE NO APPLICATION TO SECTION 8.

14. General Provisions

14.1 Notices. All notices and requests in connection with this Marketing Agreement shall be deemed given as of the day they are received by the party to whom they are addressed, either by messenger, delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed as follows:

To PointCast:

10101 N. De Anza Blvd.
Cupertino, CA 95014

Attention: Chief Executive Officer

To Microsoft:

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052-6399

Attention: Director of Business Development, Internet Division

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Phone:	(408) 253-0849	Phone:	(206) 936-6460
Fax:	(408) 253-5366	Fax:	(206) 703-1360
Copy to:	Gray Cary Ware & Freidenrich 400 Hamilton Avenue Palo Alto, CA 94301-1828	Copy to:	Law & Corporate Affairs
Fax:	(415) 327-3699	Fax:	(206) 936-7409

or to such other address as a party may designate pursuant to this notice provision.

14.2 Independent Parties. Nothing in this Marketing Agreement shall be construed as creating an employer-employee relationship, a partnership, or a joint venture between the parties.

14.3 Governing Law. This Marketing Agreement shall be governed by the laws of the State of Washington as though entered into between Washington residents and to be performed entirely within the State of Washington.

14.4 Attorneys' Fees. In any action or suit to enforce any right or remedy under this Marketing Agreement or to interpret any provision of this Marketing Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees.

14.5 Assignment. This Marketing Agreement shall be binding upon and inure to the benefit of each party's respective successors and lawful assigns; provided, however, that neither party may assign this Marketing Agreement, in whole or in part, without the prior written approval of the other party. For purposes of this Marketing Agreement, a merger, consolidation, or other corporate reorganization, or a transfer or sale of any or all of a party's stock, or of all or substantially all of its assets (a "Corporate Transaction"), shall not be deemed to be an assignment, and this Marketing Agreement shall survive and inure to the benefit of the purchaser, successor, or survivor following such Corporate Transaction; provided however that in the event of a Corporate Transaction, other than a public stock offering, in which the shareholders of a party immediately prior to such Corporate Transaction do not hold at least fifty (50) percent of the equity ownership interest of the purchaser, successor, or survivor immediately after such Corporate Transaction (a "Change of Control"), then the license granted by the other party under Section 5.3 of this Marketing Agreement shall terminate except with respect to Existing Product Inventory, unless such other party has given its written consent to the continuation of the license under Section 5.3, which consent shall not be unreasonably withheld. All licenses granted under Section 5.3 by the party subject to the Corporate Transaction (or its Subsidiaries) shall not be affected.

14.6 Construction. If for any reason a court of competent jurisdiction finds any provision of this Marketing Agreement, or portion thereof, to be unenforceable, that provision of the Marketing Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Marketing Agreement will continue in full force and effect. Failure by either party to enforce any provision of this Marketing Agreement will not be deemed a waiver of future enforcement of that or any other provision. This Marketing Agreement has been negotiated by the parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party.

14.7 Entire Agreement. This Marketing Agreement does not constitute an offer by Microsoft and it shall not be effective until signed by both parties. This Marketing Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications. It shall not be modified except by a written agreement subsequent to the date of this Marketing Agreement and signed on behalf of PointCast and Microsoft by their respective duly authorized representatives.